

No. 12571

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United States  
Court of Appeals  
for the Ninth Circuit.

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DUANE MOSS, et al.,  
Appellants,  
vs.

HAWAIIAN DREDGING CO., et al.,  
Appellees.

MARTIN H. LARSEN, et al.,  
Appellants,  
vs.

FLOOD BROS., a Corporation, et al.,  
Appellees.

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Transcript of Record

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Appeal from the United States District Court,  
Northern District of California,  
Southern Division.

AUG 19 1950



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In the United States District Court, Northern  
District of California, Southern Division

No. 25299-R

DUANE MOSS, RUSSELL A. FRAGER, WILL  
TAYLOR, FRANCIS P. ALVARADO, JO-  
SEPH SANTOS, DAVID GONZALES, on  
their own behalf and on behalf of other present  
and former employees of defendants who are  
similarly situated,

Plaintiffs,

vs.

CONTRACTORS P A C I F I C NAVAL AIR  
BASES, a corporation; BLACK COMPANY,  
a corporation; JAMES DOE and WILLIAM  
ROE, doing business under the firm name and  
style of WHITE COMPANY, a copartnership;  
JOHN DOE; RICHARD ROE; and JAMES  
DOE,

Defendants.

COMPLAINT FOR UNPAID OVERTIME  
COMPENSATION UNDER THE FAIR  
LABOR STANDARDS ACT

I.

Plaintiffs and each of them bring this action on  
behalf of themselves and all other persons and em-  
ployees similarly situated. Plaintiffs and said  
other persons are hereinafter collectively and in-  
dividually referred to as "plaintiffs."

## II.

Plaintiffs bring this actions to recover from defendants unpaid overtime compensation and an additional equal amount of liquidated damages, pursuant to §16(b) of the Fair Labor Standards Act of 1938 (Pub. No. 718, 76th Cong.; 52 Stat. 1060), hereinafter referred to as the Act.

## III.

Jurisdiction is conferred on the court by §41(8), 28 U.S.C.A. (Judicial Code) 24, giving the District Court original jurisdiction "of all suits and proceedings arising under any law regulating commerce," and by §16(b) of the Act.

## IV.

On the dates and during all of the time herein mentioned the defendant Contractors Pacific Naval Air Bases was and now is a corporation organized and doing business under the laws of a State unknown to plaintiffs and having a principal office and place of business at Oakland, Alameda County, California.

## V.

Defendant Black Company now is, and at all times herein mentioned was a corporation organized and existing under and by virtue of the laws of a State unknown to plaintiffs, and duly qualified to do business, and doing business, in the State of California.

## VI.

The true names of defendants Black Company, a corporation, James Doe and William Roe, doing

business under the firm name of White Company, a copartnership, and John Doe, Richard Roe and James Doe are now unknown to plaintiffs, and for that reason said defendants are sued herein by the said fictitious names; plaintiffs pray leave of this court to amend this complaint when said true names of said defendants are ascertained, and to insert said true names herein in lieu of said fictitious names in all of the papers, pleadings and records of this action, and that this action may thenceforth proceed against such defendants in their true names.

## VII.

During all of the times herein mentioned defendants were engaged in interstate commerce and in marine warehouse and terminal operations at Oakland, California. Said commerce and said warehouse and terminal operations consisted and consist in the unloading of raw materials, goods and commodities arriving at said marine warehouses and terminals by truck, vessel and rail; sorting, piling and storing the same; and loading said raw materials, goods and commodities, or preparing the same for loading, into vessels, trucks and railroad cars for trans-shipment to other destinations. A substantial portion of such raw materials, goods and merchandise arrive at said warehouses and terminals direct from points outside the State of California, and is and was shipped therefrom to points outside said State. A substantial portion of defendants' said business affects or is directly connected with interstate and foreign commerce.

## VIII.

In such business and during the three year period next preceding the commencement of this action, defendants employed plaintiffs as warehousemen, sweepers, Ross carrier operators, lift truck operators, truck drivers, semi-truck drivers, tractor drivers, gear men, coopers, crane men, jitney operators, and lift operators, gang bosses and foremen in connection with the operation of said warehouses and terminals. The said functions performed by plaintiffs are and were an essential part of the handling, piling, loading, unloading, sorting and storage of said raw materials, goods and merchandise and the preparation of the same for commerce, and are operations necessary thereto.

## IX.

During every week of their terms of employment with defendants, plaintiffs were employed and engaged by defendants in interstate and foreign commerce and in the handling of raw materials, goods and merchandise for interstate and foreign commerce.

## X.

During the three year period next preceding the commencement of this action, defendants employed plaintiffs for work weeks in excess of 40 hours without paying them, or any of them, the overtime compensation required by the Act for their employment in excess of 40 hours during such work weeks: Specifically,

(a) In determining whether or not plaintiffs

worked more than 40 hours in any work week during said three year period, for the purpose of determining whether overtime compensation under the Act was payable to plaintiffs, defendants, contrary to the provisions of the Act, excluded as hours worked all work performed by plaintiffs between the hours of 5 p.m. and 8 a.m. each week day, all hours worked between 5 p.m. Saturday and 8 a.m. Monday, all hours worked during holidays, all hours worked during the regular meal hours and all hours worked after a period of five working hours had elapsed since the last opportunity to eat.

(b) In computing the overtime rate payable after 40 hours had been worked during the work week, so-called "penalty work" such as shoveling, handling fish meal, and handling explosives, or skilled work such as the operation of fork type jitneys, or that of gang boss and foreman, which work carries premium rates of pay, defendants multiplied the base day rate of 102½¢ per hour by one and one-half and then added the penalty or skilled differential, instead of multiplying the total skilled or penalty rate, as the case might be, by one and one-half, as required by the Act.

(c) In computing the rate payable to plaintiffs for work after 40 hours in any one work week defendants computed overtime on the basis of the rate for the particular work being performed after such 40 hour period, rather than on a rate arrived at by averaging out the various rates of pay actually received and earned by plaintiffs dur-



ing the first 40 hours of such week, as required by the Act.

(d) Defendants failed and refused to pay one and one-half times the regular night, Sunday, holiday and lunch time rate, and the regular rate for handling explosives, as the case might be, for night, Sunday, holiday and lunch time work, and for handling explosives, after 40 hours of work had been completed by plaintiffs during a particular work week.

## XI.

The exact number of weeks so worked by plaintiffs, the exact number of hours worked during such weeks by plaintiffs, the rates and amounts of pay received therefor, the types of work performed by plaintiffs during such period, and consequently the exact amounts by which plaintiffs were underpaid by defendants, are unknown to plaintiffs, but said exact number of weeks, hours and types of work performed and consequently the exact amounts by which plaintiffs were underpaid by defendants, are known to defendants by virtue of the fact that defendants during such period made, kept and preserved and now possess books, records and accounts of the wages and hours of plaintiffs' employment, as required by §11(c) of the Act.

Wherefore, plaintiffs pray that defendants be required to make known to plaintiffs the exact number of hours which plaintiffs are shown by defendants' records to have worked in each work week during the three year period next preceding

the commencement of this action, the type of work performed, together with the hourly wages paid for the hours worked during said period and the overtime pay, if any, paid to plaintiffs during said period.

Plaintiffs further pray that judgment be awarded each of them for unpaid overtime compensation and for an additional equal amount as liquidated damages, together with costs, and that the Court allow a reasonable attorneys' fee to be paid by the defendant.

/s/ GLADSTEIN, SAWYER &  
EDISES,  
Attorneys for Plaintiffs.

State of California,  
City and County of San Francisco—ss.

Ewing Sibbett, being first duly sworn, deposes and says:

That he is associated with the law firm of Gladstein, Sawyer & Edises, attorneys for plaintiffs in the above entitled matter; that he makes this affidavit on behalf of plaintiffs as said plaintiffs reside outside of the City and County of San Francisco; that he has read the foregoing complaint and knows the contents thereof, and that the matters therein set forth are true of his own knowledge, except as to those matters set forth upon information and belief, and as to those matters he believes it to be true.

/s/ EWING SIBBETT.

Subscribed and sworn to before me this 13th day of November, 1945.

[Seal]      /s/ DOROTHY H. McLENNAN,  
Notary Public in and for the City and County of  
San Francisco, State of California.

[Endorsed]: Filed November 14, 1945.

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[Title of District Court and Cause.]

No. 25299-R

FIRST AMENDED COMPLAINT FOR UN-  
PAID OVERTIME COMPENSATION UN-  
DER THE FAIR LABOR STANDARDS  
ACT

I.

Plaintiffs and each of them bring this action on behalf of themselves, on behalf of those present and former employees of defendants listed on Exhibit "A" attached hereto and made a part hereof, and on behalf of all other persons and employees similarly situated. Plaintiffs, the said employees listed on Exhibit "A," and said other persons are hereinafter collectively and individually referred to as "plaintiffs." Each and every one of the said employees listed on Exhibit "A" has authorized in writing the bringing of this action on their behalf.

II.

Plaintiffs bring this action to recover from defendants unpaid overtime compensation and an additional equal amount of liquidated damages,



pursuant to §16(b) of the Fair Labor Standards Act of 1938 (Pub. No. 718, 76th Cong.; 52 Stat. 1060), hereinafter referred to as the Act.

### III.

Jurisdiction is conferred on the Court by §41(8), 28 U.S.C.A. (Judicial Code) 24, giving the District Court original jurisdiction "of all suits and proceedings arising under any law regulating commerce," and by §16(b) of the Act.

### IV.

Defendants Hawaiian Dredging Company, Limited, a corporation, Raymond Concrete Pile Company, a corporation, Turner Construction Company, a corporation, Morrison-Knudsen Company, Inc., a corporation, J. H. Pomeroy & Co., Inc., a corporation, W. A. Bechtel Co., a corporation, The Utah Construction Company, a corporation, and Black Company, a corporation, now are, and at all times herein mentioned were corporations organized and existing under and by virtue of the laws of a State or States unknown to plaintiffs, and duly qualified to do business, and doing business, in the State of California.

### V.

The true names of defendants Black Company, a corporation, James Doe and William Roe, doing business under the firm name of White Company, a copartnership, and John Doe, Richard Roe and James Doe are now unknown to plaintiffs, and for that reason said defendants are sued herein by the said fictitious names; plaintiffs pray leave of this

Court to amend this complaint when said true names of said defendants are ascertained, and to insert said true names herein in lieu of said fictitious names in all of the papers, pleadings and records of this action, and that this action may thenceforth proceed against such defendants in their true names.

## VI.

During all of the times herein mentioned defendants were engaged in interstate commerce and in marine warehouse and terminal operations at Oakland, California. Said commerce and said warehouse and terminal operations consisted and consist in the unloading of raw materials, goods and commodities arriving at said marine warehouses and terminals by truck, vessel and rail; sorting, piling and storing the same; and loading said raw materials, goods and commodities, or preparing the same for loading, into vessels, trucks and railroad cars for trans-shipment to other destinations. A substantial portion of such raw materials, goods and merchandise arrive at said warehouses and terminals direct from points outside the State of California, and is and was shipped therefrom to points outside said State. A substantial portion of defendants' said business affects or is directly connected with interstate and foreign commerce.

## VII.

In such business and during the three year period next preceding the commencement of this action, defendants employed plaintiffs as warehousemen,

sweepers, Ross carrier operators, lift truck operators, truck drivers, semi-truck drivers, tractor drivers, gear men, coopers, crane men, jitney operators, and lift operators, gang bosses and foremen in connection with the operation of said warehouses and terminals. The said functions performed by plaintiffs are and were an essential part of the handling, piling, loading, unloading, sorting and storage of said raw materials, goods and merchandise and the preparation of the same for commerce, and are operations necessary thereto.

#### VIII.

During every week of their terms of employment with defendants, plaintiffs were employed and engaged by defendants in interstate and foreign commerce and in the handling of raw materials, goods and merchandise for interstate and foreign commerce.

#### IX.

During the three year period next preceding the commencement of this action, defendants employed plaintiffs for work weeks in excess of 40 hours without paying them, or any of them, the overtime compensation required by the Act for their employment in excess of 40 hours during such work weeks: Specifically,

(a) In determining whether or not plaintiffs worked more than 40 hours in any work week during said three year period, for the purpose of determining whether overtime compensation under the Act was payable to plaintiffs, defendants, con-

trary to the provisions of the Act, excluded as hours worked all work performed by plaintiffs between the hours of 5 p.m. and 8 a.m. each week day, all hours worked between 5 p.m. Saturday and 8 a.m. Monday, all hours worked during holidays, all hours worked during the regular meal hours and all hours worked after a period of five working hours had elapsed since the last opportunity to eat.

(b) In computing the overtime rate payable after 40 hours had been worked during the work week, so-called "penalty work" such as shoveling, handling fish meal, and handling explosives, or skilled work such as the operation of fork type jitneys, or that of gang boss and foreman, which work carries premium rates of pay, defendants multiplied the base day rate of 102½ cents per hour by one and one-half and then added the penalty or skilled differential, instead of multiplying the total skilled or penalty rate, as the case might be, by one and one-half, as required by the Act.

(c) In computing the rate payable to plaintiffs for work after 40 hours in any one work week defendants computed overtime on the basis of the rate for the particular work being performed after such 40 hour period, rather than on a rate arrived at by averaging out the various rates of pay actually received and earned by plaintiffs during the first 40 hours of such week, as required by the Act.

(d) Defendants failed and refused to pay one

and one-half times the regular night, Sunday, holiday and lunch time rate, and the regular rate for handling explosives, as the case might be, for night, Sunday, holiday and lunch time work, and for handling explosives, after 40 hours of work had been completed by plaintiffs during a particular work week.

### X.

The exact number of weeks so worked by plaintiffs, the exact number of hours worked during such weeks by plaintiffs, the rates and amounts of pay received therefor, the types of work performed by plaintiffs during such period, and consequently the exact amounts by which plaintiffs were underpaid by defendants, are unknown to plaintiffs, but said exact number of weeks, hours and types of work performed and consequently the exact amounts by which plaintiffs were underpaid by defendants, are known to defendants by virtue of the fact that defendants during such period made, kept and preserved and now possess books, records, and accounts of the wages and hours of plaintiffs' employment, as required by Sec. 11(c) of the Act.

Wherefore, plaintiffs pray that defendants be required to make known to plaintiffs the exact number of hours which plaintiffs are shown by defendants' records to have worked in each work week during the three year period next preceding the commencement of this action, the type of work performed, together with the hourly wages paid for the hours worked during said period and the



overtime pay, if any, paid to plaintiffs during said period.

Plaintiffs further pray that judgment be awarded each of them for unpaid overtime compensation and for an additional equal amount as liquidated damages, together with costs, and that the Court allow a reasonable attorneys' fee to be paid by the defendants.

GLADSTEIN, ANDERSEN,  
RESNER, SAWYER &  
EDISES,

Attorneys for Plaintiffs.

State of California,

City and County of San Francisco—ss.

Ewing Sibbett, being first duly sworn, deposes and says:

That he is associated with the law firm of Gladstein, Andersen, Resner, Sawyer & Edises, attorneys for plaintiffs in the above-entitled matter; that he makes this affidavit on behalf of plaintiffs as said plaintiffs reside outside of the City and County of San Francisco; that he has read the foregoing first amended complaint and knows the contents thereof, and that the matters therein set forth are true of his own knowledge, except as to those matters set forth upon information and belief, and as to those matters he believes it to be true.

/s/ EWING SIBBETT.

Subscribed and sworn to before me this 24th day  
of January, 1946.

[Seal]     /s/ MARIE H. STANLEY,  
Notary Public in and for the City and County of  
San Francisco, State of California.

My commission expires November 20, 1947.

### EXHIBIT "A"

#### Employees of Contractors PNAB

Name	Address
John D. Belvel .....	6624 Outlook Avenue, Oakland
Walter Johnson .....	722 Brockhurst Street, Oakland
Charlie Essick .....	111C Singleton Avenue, Alameda
Lem I. Moore .....	936-33rd Street, Oakland
Elmer Smith .....	P.O. Box 114, Homer, Louisiana
Duffy Johnson .....	1121 Linden St., Oakland
Johnnie Mitchell .....	1722 Buena Vista Avenue, Alameda
Osborne C. Winfree .....	823 Washington Street, Oakland
Alcapers Singleton .....	1670A-34th Street, Oakland
Dan L. Hawkins .....	860 Willow Street, Oakland
William F. McHugh .....	1539 Funston Avenue, San Francisco
George W. Beers .....	2981 East 7th Street, Berkeley
Dan Eaglin .....	1430-66th Street, Berkeley
William Hunter .....	1609-11th Street, Oakland
King F. Parker .....	Route 5, Box 162, El Dorado, Ark.
Celester Hawkins .....	589D Gibbs Street, Alameda
Thaddeus E. Tate .....	1712 Arbor Street, Alameda
E. G. Snowden .....	1123D Stalker Way, Alameda
Lee Eddie McEntire .....	1625 Ashby Avenue, Berkeley
Ysidro Alegria .....	921 Grove Street, Oakland
Juan S. Frias .....	1516 Woods Street, Oakland
Charles Byrne .....	3916 Cerrito Avenue, Oakland
Isiah Jackson .....	2308 Kirkham Street, Oakland
Albert Engelhardt .....	2130-107th Avenue, Oakland
William Jackson .....	511 Peralta St., Oakland
Roy Doyle .....	849 Poplar Court, Oakland
Frank Silva .....	1310-65th Street, Emeryville, Calif.
John Vierra .....	Box 21439 Foothill Blvd., Hayward
Murle Mehl .....	1240 Dwight Way, Berkeley
Evalt Riva .....	1339 Talbot Avenue, Berkeley
Denzil Adams .....	2350A Martin Street, Oakland
Manuel M. Agrela .....	1638-21st Avenue, Oakland
Edward Robinson .....	5369 Manila Avenue, Oakland

Name	Address
Manuel G. Izquierdo .....	261 Joaquin Avenue, San Leandro
James E. Walker .....	411 Hawthorne Avenue, Oakland
John Guadagna .....	3244 Idaho Street, Berkeley
William Seeger .....	2437 Grant Street, Berkeley
Joe Smoke .....	804 East 10th Street, Oakland
Leonard F. Petty .....	4782 Alvin Road, Oakland
Manuel Medeiros .....	2244 Este Street, Oakland
Faustino Ortiz .....	3228 East 12th Street, Oakland
John Tammela .....	730-4th Avenue, Oakland
Tony J. Moura .....	1615-47th Avenue, Oakland
John Paiva .....	1345 Clark Street, San Leandro
John Albert Nix .....	804 East 10th Street, Oakland
E. E. Daniels .....	1417 Carleton Street, Berkeley
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Albert L. Cowan .....	4980 Read Road, Oakland
John Hurtado .....	2315-9th Street, Berkeley
Henry J. Brower .....	16028 Via Segundo, San Lorenzo
Kenneth J. Brooks .....	2404 Telegraph Avenue, Oakland
Guy M. Wilson .....	307 Cypress Street, Alameda
Jack Rubino .....	1229F-65th Avenue, Oakland
Fred Otto Bueholz .....	1842-7th Avenue, Oakland
Fred V. Grace .....	3510 East 8th Street, Oakland
Willie Peterson .....	3039 Magnolia Street, Oakland
Ray Becerra .....	813 Clay Street, Oakland
Charles E. Hart .....	583-11th Street, Oakland
Robert H. Sherman .....	355 Grant Avenue, San Lorenzo
Will Taylor .....	933B Stalker Way, Alameda
Percy L. Dillian .....	25A Home Place West, Oakland
Jake Robertson .....	1401-9th Street, Oakland
Rafael Gonsalves .....	902 Castro Street, San Leandro
Joe Amate .....	1437-166th Avenue, San Leandro
Richard Baeza .....	1009 Delaware Street, Berkeley
Gino Giannini .....	141 Peralta Street, Hayward
John Mirizzi .....	873 McElroy Street, Oakland
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Joseph Mendez .....	969-30th Street, Oakland
John Santos, Jr. ....	2216 Dennison Street, Oakland
James C. Whitlock .....	1608-41st Avenue, Oakland
Gino Mazzanti .....	3153 East 27th Street, Oakland
Jess Rocha .....	1822-39th Avenue, Oakland
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Delwin I. Moss .....	904-36th Avenue, Oakland
D. Vukmirovich .....	4417 East 14th Street, Oakland
Clare A. Luckins .....	722B-5th Avenue, Oakland
Lauro Cortez .....	601 Grove Street, Oakland
Antone Rodrigues .....	2638 East 10th Street, Oakland



Name	Address
------	---------

Harry L. Harrison	4329 West Street, Oakland
Lawrence Aker	2432 Market Street, Oakland
Desmore Harvey	1027 Wood Street, Oakland
Joseph A. Sterling	1611 Fair View Street, Oakland
James C. Rodger	871-35th Street, Oakland
Louis Johnson	929-26th Street, Oakland
James H. Kimble	1060-37th Street, Oakland
Robert McGruder	518 Henry Street, Oakland
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Lawrence Walker	1529 Stewart Street, Berkeley
Otis Stranahan	2745 East 17th Street, Oakland
Eddie Williams	720-5th Street, Oakland
Robert Dickerson	360 Union Street, Oakland
Albin Ventura	2733-78th Avenue, Oakland
George Valine	2150 Sonoma Way, Oakland
Ernest Berger	608-12th Street, Oakland
Albert Martinez	2127-6th Street, Berkeley
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John S. Black	518 Henry Street, Oakland
Charley Parhan	1326-12th Street, Oakland
Antone P. Perry	2802 East 9th Street, Oakland
Matron Martin	3428 Haven Street, Oakland
Willie Fountain	1683-14th Street, Oakland
Isaiah Brooks	926-33rd Street, Oakland
William C. Cameron	1032-7th Street, Oakland
David Minor	1727 Grove Street, Oakland
Robert Alex	320B Mosley Street, Alameda
Larnel Gibson	927 Cypress Street, Oakland
Joe C. Bennett	1628 Kirkham Street, Oakland
Cecil E. Shigg	873 Apgar Street, Oakland
Fred R. Cuccia	1093 Peralta Avenue, Albany
John H. Davis	1234-10th Street, Oakland
David A. Wilson	2923 Harper Street, Berkeley
Gilbert Johnson	1280-8th Street, Oakland
Willis R. Bower	3233 Helen Street, Oakland
Ralph Ingwersen	1081 Annseley Road, Piedmont
David S. Contreros	342 Henry Street, Oakland
Emil Johnson	2578 California Street, San Francisco
Max G. Terrazas	1534-15th Street, Oakland
W. M. Johnson	1728-10th Street, Oakland
Henry Clayton	1634 Telegraph Avenue, Oakland
Val Mourer	2036 Encinal Avenue, Alameda
John L. Pryor	902 Linden Street, Oakland
William Jefferson	985-8th Street, Oakland
Frank Lorence	1733-16th Avenue, Oakland
Joseph I. Valdez	976-14th Street, Oakland
Rado Abradovich	1319-94th Avenue, Oakland
Manuel M. Rezendes	1729-23rd Avenue, Oakland
Clide H. Marshall	1726-10th Street, Oakland

Name	Address
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Roosevelt Thomas .....	1532-9th Street, Oakland
Morton R. Hodges .....	9841 Empire Road, Oakland
Watson Alston .....	855C Stalker Way, Alameda
Donald E. Dedman .....	3023 Center Street, Richmond
Edward Logan .....	2432 Laredo Street, Richmond
Joseph A. Kelly .....	1344 Parker Street, Berkeley
Monroe Applewhite .....	1632 Oregon Street, Berkeley
Tom Deloney .....	1014 Linden Street, Oakland
Junius P. Withers .....	1627-51st Avenue, Oakland
Jesse Stephens .....	1073-24th Street, Oakland
Willie W. Brinston .....	431A Mosley Avenue, Alameda
Thomas W. Smith .....	2412C Martin Street, Alameda
James Parker .....	1084-3rd Street, Oakland
Willie B. Scott .....	1656-7th Street, Oakland
Jesse Niehoff .....	582-5th Street, Oakland
Howard Oaks .....	2610 San Pablo Avenue, Oakland
Billy Erath .....	1309 Magnolia Street, Oakland
Sanford McPierson .....	2443 Poplar Street, Oakland
Earvin G. Catherine .....	3520 West Street, Oakland
James Porter .....	818 Gilman Street, Berkeley
Kay Porter .....	813-42nd Street Oakland
Sylvester Daniels .....	1032-63rd Street, Oakland
Anthony Carlee .....	936-33rd Street, Oakland
Charley Williams .....	1032-63rd Street, Oakland
A. A. Whitaker .....	999-60th Street, Oakland
George Kachuck .....	101-2F S. 11th Street, Richmond
Orell Andrews .....	533 Magnolia Street, Oakland
John Wills .....	1111 Willow Street, Oakland
Juan Alvares .....	636 Jefferson Street, Alameda
Dan Ross .....	1240 Union Street, Oakland
Lark Sloan .....	1683 Atlantic Street, Oakland
Charlie Sanders .....	1635-15th Street, Oakland
Lathers Smith .....	4920 Seaport Street, Richmond
Mike Ruiz .....	65 Defense Ct., Auditorium Vil., Oakland
Kenneth Curry .....	698 A Street, Hayward
Frank Lafiton .....	1233 Chestnut Street, Oakland
Willis E. Andrews .....	533 Magnolia Street, Oakland
Henry Wright .....	1317 Alcatraz Avenue, Berkeley
Edward Anderson .....	2709 Linden Street, Oakland
W. L. Lewis .....	4321 Stockton Street, Richmond
James Rivers .....	1717 Chase Street, Oakland
Joe Arcenauet .....	715 Peralta Street, Oakland
Robert MeJoy .....	517C Gibbs Avenue, Alameda
Harrison Conner .....	2703 Linden Street, Oakland
Manuel Abren .....	5412 Wentworth Avenue, Oakland
Joe Montemayor .....	692-4th Street, Oakland
Ernest Posey .....	717 Franklin Street, Oakland
Arthur Starghill .....	504 Center Street, Oakland

Name	Address
Dan Thornton .....	529-8th Street, Oakland
Willie N. Raulston .....	Singleton Street, Alameda
Frank Sacconago .....	466 Pacific Avenue, Alameda
William Allen .....	1108-10th Street, Oakland
John Valin .....	California Hotel, Alameda
Albert Jackson .....	524 Adeline Street, Oakland
L. Onate .....	173-3rd Street, Oakland
Van W. Davis .....	705 Brush Street, Oakland
Tony G. Hidalgo .....	RFD Box 926, San Lorenzo
John Leslie Billett .....	6114 East 17th Street, Oakland
Angelo L. Chiappari .....	794 Jackson Street, Hayward
Harry Thomas .....	3437 Harlem Street, Oakland
Milton E. Nelson .....	1035 Taylor Avenue, Alameda
James Rogers .....	871-35th Street, Oakland
Ernest Bush .....	3rd Street, Oakland
Emile Lauricella .....	316 Myrtle Street, Oakland

**[Endorsed]:** Filed January 28, 1946.

In the United States District Court for the Northern District of California, Southern Division

No. 26060-S

MARTIN H. LARSEN, on his own behalf and on behalf of all other persons and employees of defendants who are similarly situated,

Plaintiffs,

vs.

FLOOD BROS., a corporation; BLACK COMPANY, a corporation; JAMES DOE and WILLIAM ROE, doing business under the firm name and style of WHITE COMPANY, a co-partnership; JOHN DOE, RICHARD ROE and JAMES DOE,

Defendants.

FIRST AMENDED COMPLAINT FOR UNPAID OVERTIME COMPENSATION UNDER THE FAIR LABOR STANDARDS ACT

I.

Plaintiff named above brings this action on behalf of himself and on behalf of all other persons and employees of the defendants similarly situated. Plaintiff and said other persons and employees are hereinafter collectively and individually referred to as plaintiffs, including but not limited to the plaintiffs named on Exhibit "A," attached hereto and made a part hereof.

II.

Plaintiffs bring this action to recover from de-

defendants unpaid overtime compensation and an additional equal amount of liquidated damages, pursuant to section 16(b) of the Fair Labor Standards Act of 1938 (Pub. No. 718, 76th Cong.; 52 Stat. 1060), hereinafter referred to as the Act.

### III.

Jurisdiction is conferred on the court by section 41 (8), 28 U.S.C.A. (Judicial Code) 24, giving the District Court original jurisdiction "of all suits and proceedings arising under any law regulating commerce," and by section 16(b) of the Act.

### IV.

On the dates and during all of the times herein mentioned the defendant Flood Bros. was and now is a corporation organized and doing business under the laws of a State unknown to plaintiffs, having its principal office and place of business at San Francisco, California.

### V.

Defendant Black Company now is, and at all times herein mentioned, was a corporation organized and existing under and by virtue of the laws of a State or Territory unknown to plaintiffs, and duly qualified to do business, and doing business, in the City and County of San Francisco, State of California.

### VI.

The true names of defendants James Doe and William Roe, doing business under the firm name and style of White Company, a co-partnership, and



John Doe, Richard Roe and James Doe, are now unknown to plaintiffs and for that reason said defendants are sued herein by the said fictitious names; plaintiffs pray leave of this Court to amend this complaint when said true names of said defendants are ascertained, and to insert said true names herein in lieu of said fictitious names in all of the papers, pleadings and records of this action, and that this action may thenceforth proceed against such defendants in their true names.

## VII.

During all of the times herein mentioned defendants herein engaged in the loading and discharging of vessels, transportation of commodities originating outside the State of California, handling, storage and wholesaling of commodities originating from points outside the State of California, maintenance and repair of facilities for persons engaged in interstate and foreign commerce and for firms engaged in the manufacture of commodities for interstate and foreign commerce, or employed and engaged by defendants in occupations related thereto.

## VIII.

During the three year period next preceding the filing of this action plaintiffs were employed by defendants, and during every week of such employment with defendants, plaintiffs were employed and engaged by defendants in interstate and foreign commerce, or employed and engaged by defendants in occupations related thereto.

## IX.

In such business and during the three year period next preceding the commencement of this action defendants employed plaintiffs in the capacities of walking bosses, ship bosses, and dock bosses.

## X.

During the three year period next preceding the commencement of this action defendants employed plaintiffs for work weeks in excess of forty hours without paying plaintiffs, or any of them, the overtime compensation required by the Act for such employment during such work weeks, in that:

(a) In determining whether or not plaintiffs or any of them worked more than 40 hours in any work week during said three year period, for the purpose of determining whether overtime compensation under the Act was payable to plaintiffs, defendants, contrary to the provisions of the Act, excluded as hours worked all work performed by each of the plaintiffs in excess of 6 hours between the hours of 8 a.m. and 5 p.m. each week day, all work performed by each plaintiff between the hours of 5 p.m. and 8 a.m. each week day, all hours worked between 5 p.m. Saturday and 8 a.m. Monday, all hours worked during legal holidays, all hours worked during the regular meal hours and all hours worked after a period of five working hours had elapsed since the last opportunity to eat.

(b) Defendants failed and refused to pay

[Title of District Court and Cause.]

No. 25299-R

AMENDMENT TO FIRST AMENDED COMPLAINT FOR UNPAID OVERTIME COMPENSATION UNDER THE FAIR LABOR STANDARDS ACT

The First Amended Complaint on file in the above-entitled action is hereby amended as follows:

I.

Paragraph I thereof is hereby amended by striking out on lines 7 and 8 of page 2 thereof the words "and on behalf of all other persons and employees similiarly situated," and on line 9 thereof the words "and said other persons."

II.

Exhibit "A" attached to said First Amended Complaint is hereby amended by adding thereto the following names:

Edward A. Carmo, Earle E. Daniels, Oscar Gray, Sylvester Houston, Everett Pahkala, Leo Palmer, William J. Perez, James Rivers, Lark Sloan, and Monroe Thomas.

Dated: October 5, 1946.

GLADSTEIN, ANDERSEN,  
RESNER, SAWYER &  
EDISES,

/s/ EWING SIBBETT,  
Attorneys for Plaintiffs.

[Endorsed]: Filed October 8, 1946.



[Title of District Court and Cause.]

No. 26060-S

AMENDMENT TO FIRST AMENDED COMPLAINT FOR UNPAID OVERTIME COMPENSATION UNDER THE FAIR LABOR STANDARDS ACT

The First Amended Complaint on file in the above-entitled action is hereby amended as follows:

I.

Paragraph I thereof is hereby amended by deleting said paragraph and substituting therefor the following paragraph:

“Plaintiff named above brings this action on behalf of himself and on behalf of those persons listed on Exhibit ‘A’ attached hereto and made a part hereof. Plaintiff and said other persons are hereinafter collectively and individually referred to as ‘plaintiffs’.”

Dated: December 17, 1946.

GLADSTEIN, ANDERSEN,  
RESNER, SAWYER &  
EDISES,

/s/ RICHARD GLADSTEIN,  
Attorneys for Plaintiffs.

[Endorsed]: Filed December 23, 1946.

BYRNE ORGANIZATION, A COPARTNERSHIP, SAID CORPORATIONS AND THE LAST NAMED COPARTNERSHIP DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF CONTRACTORS PACIFIC NAVAL AIR BASES, A JOINT VENTURE.

Now come the defendants above named and make this their answer to plaintiffs' first amended complaint on file herein, and admit, deny and aver as follows:

#### First Defense

The first amended complaint does not state a claim against the defendants upon which relief can be granted.

#### Second Defense

Each of the plaintiffs who was employed by defendants received compensation in full compliance with all of the terms and provisions of said Fair Labor Standards Act of 1938, and each of said plaintiffs was compensated by defendants for all hours worked by him for said defendants in excess of forty hours in any one work week at a rate of not less than one and a half times the regular rate of pay at which each such plaintiff was employed by defendants.

#### Third Defense

##### I.

These defendants aver that they are without knowledge or information sufficient to form a be-

lief as to the truth of the allegations contained in paragraphs I and V of said first amended complaint.

## II.

These defendants admit the allegations contained in paragraphs II, III, and IV of said first amended complaint.

## III.

Answering the allegations contained in paragraph VI of said first amended complaint, the defendants Hawaiian Dredging Company, Limited, J. H. Pomeroy & Co., Inc., W. A. Bechtel Co., The Utah Construction Company, and the Byrne Organization admit that in the period from November 14, 1942, through December 31, 1943, and the defendants Raymond Concrete Pile Company, Turner Construction Company, and Morrison-Knudsen Company, Inc., admit that during all of the times mentioned in said first amended complaint, they were engaged in marine warehouse and terminal operations in Oakland, California, consisting of the unloading of raw materials, goods and commodities arriving at said marine warehouse and terminal by truck, vessel and rail; sorting, piling and storing the same; and loading said raw materials, goods and commodities, or preparing the same for loading into vessels, trucks and railroad cars for transshipment to other destinations; and admit, for the purposes of this case only, that to the extent of the operations in which the plaintiffs were employed, they were engaged in interstate commerce. The defendants aver that they are without knowledge or

information sufficient to form a belief as to the truth of the allegations contained in said paragraph VI concerning the activities or operations of the other defendants, or in so far as they refer to the other defendants; and deny each and every other allegation contained in said paragraph VI of said first amended complaint.

#### IV.

Answering the allegations of paragraph VII of said first amended complaint, defendants aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph VII concerning the activities or operations of the other defendants, or in so far as they refer to the other defendants. These defendants admit that they employed the plaintiffs in some of the classifications mentioned in said paragraph VII during some of the three-year period mentioned therein, but deny that they employed all the plaintiffs during all of said three-year period; and deny each and every other allegation contained in said paragraph VII of said first amended complaint.

#### V.

These defendants, for the purposes of this case only, admit the allegations of paragraph VIII of the first amended complaint except that they deny that all plaintiffs were employed during every week covered by the action, and further aver that they are without knowledge or information sufficient to form a belief as to the truth of the allegations

of said paragraph concerning the activities or operations of the other defendants or in so far as they refer to the other defendants; and deny each and every other allegation contained in said paragraph VIII of said first amended complaint.

## VI.

Answering the allegations of paragraph IX of the first amended complaint, defendants aver that the plaintiffs were employed under the terms of a collective bargaining agreement which established a normal working day, with a straight time rate of pay applicable to work done during the hours of said normal working day, and designated all hours outside said normal working day as overtime and fixed the rate of pay for work in said overtime hours at one and a half times the straight time rate of pay. The collective bargaining agreements in effect at one time or another during the period covered by this action established certain so-called "differentials" for the performance of certain kinds of work (called skill differentials) and for the handling of particular kinds of cargo (called cargo or penalty differentials). Defendants say that until August 1, 1944, they paid the plaintiffs straight time pay for work in the normal working hours, plus any applicable differentials, and overtime pay for work in overtime hours, plus any applicable differentials; but that on and after August 1, 1944, the defendants paid the plaintiffs straight time pay for work in the normal working hours, plus applicable differentials, and overtime pay, plus



time and a half applicable differentials for work in overtime hours. In any week in which a plaintiff worked more than 40 hours during the straight time hours, the defendants, prior to August 1, 1944, paid him for each such hour in excess of 40, one and a half times the straight time rate plus any applicable differential; and after August 1, 1944, the defendants paid him one and a half times the straight time rate, and one and a half times any differentials which were applicable. The defendants aver that payments made in this manner were in full compliance with all the requirements of the Fair Labor Standards Act. The defendants deny each and every allegation contained in paragraph IX of the first amended complaint except to the extent that they are admitted in the foregoing averments.

## VII.

Answering the allegations contained in paragraph X of the said first amended complaint, defendants admit that during the period mentioned in said first amended complaint, defendants made, kept and preserved and now possess records and accounts of the wages and hours of employment of their employees, including the plaintiffs, who were employed by defendants, as required by section 11 (c) of the Fair Labor Standards Act of 1938 (Public Law No. 718, 75th Congress, 52 Stat. 1060), showing the number of weeks worked, the number of hours worked during each week, the types of work performed and the rates and amounts of pay received therefor; aver that they are with-

out knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph X concerning the knowledge of plaintiffs, or any of them, or the activities or operations of the other defendants or in so far as they refer to the other defendants; and deny each and every other allegation contained in said paragraph X of said first amended complaint.

#### Fourth Defense

Defendants aver that the plaintiffs whose names appear in Appendix A of this answer did not work for defendants, or either of them, during the period covered by this action, and the defendants therefore deny liability to any of them. In the other portions of this answer the words "the plaintiffs" are to be taken as applicable to all named plaintiffs other than those listed in Appendix A, except that if it should appear at the trial that any plaintiff listed in Appendix A did in fact work for the defendants, they are also to be included in the said words.

#### Fifth Defense

That the alleged rights of action set forth in said first amended complaint did not accrue within one year next before the commencement of said actions, and are barred by subdivision 1 of section 340 of the Code of Civil Procedure of the State of California.

#### Sixth Defense

That the alleged rights of action set forth in said

first amended complaint did not accrue within two years next before the commencement of said actions, and are barred by subdivision 1 of section 339 of the Code of Civil Procedure of the State of California.

Wherefore, defendants pray that plaintiffs take nothing by their said action, and that defendants be hence dismissed and have judgment for their costs and such other and further relief as may be meet and proper in the premises.

Dated: November 25, 1946.

FRANK J. HENNESSY, ESQ.,  
United States Attorney for the Northern District  
of California.

By /s/ FRANK J. HENNESSY.

JOHN F. SONNETT, ESQ.,  
Assistant Attorney General  
of the United States.

By /s/ FRANK J. HENNESSY.

J. FRANCIS HAYDEN, ESQ.,  
Special Assistant to the Attorney General of the  
United States.

By /s/ FRANK J. HENNESSY.

MARVIN C. TAYLOR, ESQ.,  
Special Attorney, Department of Justice of the  
United States.

By /s/ FRANK J. HENNESSY,  
Attorneys for Defendants.



## Appendix A

Watson Alston	Edward Logan
Orell Andrews	Lee Eddie McEntire
Willis E. Andrews	Robert McJoy
Monroe Applewhite	Howard Oaks
John Leslie Billett	L. Ovate
Willie B. Brinston	James Parker
Earvin G. Catherine	James Porter
Angelo L. Chiappari	Kay Porter
Kenneth Curry	Willie N. Raulston
Van W. Davis	James Rivers
Donald E. Dedman	Willie B. Scott
Tom Deloney	Lathers Smith
Billy Erath	Thomas W. Smith
Gino Giannini	E. J. Snowden
Celester Hawkins	Jesse Stephen
Dan Hawkins	Thaddeus S. Tate
Albert Jackson	Harry Thomas
George Kachuck	Dan Thornton
Joseph A. Kelly	John Valin
Frank Labiton	Junius P. Withers
W. L. Lewis	

[Endorsed]: Filed November 25, 1946.

Amended Complaint it was engaged in the loading and discharging of vessels and handling of commodities, some of which originated from points outside of the State of California and some of which did not originate outside the State of California. This defendant denies generally and specifically, each and all of the allegations of paragraph VII of the First Amended Complaint which are not specifically alleged in this paragraph.

## V.

Answering the allegations of paragraphs VIII and IX of the first Amended Complaint, defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraphs VIII and IX concerning the activities or operations of other defendants or in so far as they refer to other defendants; denies that defendant employed plaintiffs listed in Appendix A attached hereto, or any of them, at any time during the three-year period mentioned in paragraphs VIII and IX; admits that defendant employed the remaining named plaintiffs as walking bosses during some of the three-year period mentioned in paragraphs VIII and IX; but denies that it employed all of the remaining plaintiffs during all of said three-year period; alleges, for the purposes of this action only, that during the time that any of the plaintiffs were engaged in producing or handling goods moving in interstate commerce they were employed and engaged in interstate commerce as alleged, but denies that any of

the plaintiffs produced or handled any goods at all, within the meaning of the act; and denies generally and specifically, each and all of the allegations contained in paragraphs VIII and IX of the First Amended Complaint which are not specifically alleged in this paragraph.

## VI.

Answering the allegations of paragraph X of the First Amended Complaint, defendant alleges that plaintiffs were employed under the terms of oral agreement which established a normal working day, with a straight time rate of pay applicable to the work done during the hours of said normal working day, and which designated all hours outside said normal working day as overtime hours and fixed the rate of pay for work in said overtime hours at the rate of one and one half times the straight time rate of pay. The oral agreements in effect at one time or another during the period covered by this action established certain so-called "differentials" for the supervision of the handling of particular kinds of cargo (called cargo or penalty differentials). Defendant alleges that until October 1, 1944, it paid plaintiffs straight time pay for work in the normal working hour, plus any applicable differentials, and overtime pay for work in overtime hours, plus any applicable differentials; but that on and after October 1, 1944, defendant paid plaintiffs straight time pay for work in the normal working hours, plus applicable differentials and overtime pay, plus time and a

half applicable differentials for work in overtime hours. In any week in which a plaintiff worked more than 40 hours, defendant prior to October 1, 1944, paid him for each hour in excess of forty, one and a half times the straight time rate plus any applicable differential; and after October 1, 1944, the defendant paid such plaintiff one and a half times the straight time rate, and one and a half times any differentials which were applicable. Defendant alleges that payments in this manner were in full compliance with all the requirements of the Fair Labor Standards Act. Defendant denies each and every allegation contained in paragraph X of the First Amended Complaint which is not specifically alleged in this paragraph.

## VII.

Answering paragraph XI of First Amended Complaint, defendant alleges that during the period mentioned therein, defendant made, kept and preserved and now possesses records and accounts of wages and hours of employment of its employees, including plaintiffs who were employed by defendant, showing the number of weeks worked, the number of hours worked during each week, the types of work performed, and the rates and amounts of pay received therefor; and complied with all the requirements of Section 11 (c) of the Fair Labor Standards Act. Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations of said paragraph XI concerning the

knowledge of plaintiffs, or any of them, or the activities or operations of other defendants or in so far as they refer to other defendants; and denies each and every other allegation contained in said paragraph XI of said First Amended Complaint.

#### Fifth Defense

The alleged rights of action set forth in said First Amended Complaint did not accrue within one year next before the commencement of said actions, and are barred by subdivision 1 of section 340 of the Code of Civil Procedure of the State of California.

#### Sixth Defense

The alleged rights of action set forth in said First Amended Complaint did not accrue within two years next before the commencement of said actions, and are barred by subdivision 1 of section 339 of the Code of Civil Procedure of the State of California.

Wherefore, defendant prays that plaintiffs take nothing by their said action, and that defendant be hence dismissed and have judgment for its costs and such other and further relief as may be meet and proper in the premises.

Dated: January 2, 1947.

/s/ GREGORY A. HARRISON,  
BROBECK, PHLEGER &  
HARRISON,

Attorneys for Defendant  
Designated Above.

[Endorsed]: Filed January 3, 1947.



[Title of District Court and Cause.]

No. 25301-G, No. 25300-S, No. 25302-R, and No. 25299-R.

STIPULATION AND ORDER FOR  
CONSOLIDATION

It Is Hereby Stipulated by and between respective counsel for the parties to the above entitled actions that said actions may be consolidated for trial on May 20, 1947, before the Hon. Louis E. Goodman, Judge of the Federal District Court, with the following numbered cases now set for consolidated trial before the said Judge Louis E. Goodman, on May 20, 1947:

26061 G	26243 R	26077 S
26074 G	26071 R	26073 S
26064 G	26075 S	26247 S
26067 G	26060 S	27001 H
26068 G	26245 H	
26072 G	26242 S	26535 R
26076 R	26063 S	26536 G
26078 R	26069 S	26919 G
26066 R	26065 S	26070 G
26062 R	26537 S	

Dated: April 30, 1947.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,

/s/ RICHARD GLADSTEIN,  
Attorneys for Plaintiffs.



/s/ FRANK J. HENNESSY,  
United States Attorney,  
Attorney for Defendants.

/s/ C. ELMER COLLETT,  
Asst. U. S. Attorney. '

It Is So Ordered April 30, 1947.

/s/ LOUIS GOODMAN,  
Judge of the United States  
District Court.

Dated: April 30, 1947.

[Endorsed]: Filed April 30, 1947.

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In the United States District Court for the North-  
ern District of California, Southern Division  
No. 25299-G

DUANE MOSS, et al.,

Plaintiffs,

vs.

HAWAIIAN DREDGING CO., et al.,

Defendants.

MOTION OF DEFENDANT  
TO AMEND ANSWER

Defendant moves the court to amend its answer  
on file herein by adding thereto the following addi-  
tional defenses:

## Tenth Defense

The defendant says that Section 9 of the Portal-to-Portal Act of 1947 provides that, "no employer shall be subject to any liability . . . for or on account of the failure of the employer to pay . . . overtime compensation under the Fair Labor Standards Act of 1938, as amended, the Walsh-Healey Act, or the Bacon-Davis Act, if he pleads and proves that the act or omission complained of was in good faith in conformity with and in reliance on any administrative regulation, order, ruling, approval or interpretation, of any agency of the United States, or any administrative practice or enforcement policy of any such agency with respect to the class of employers to which he belonged . . ."

The defendant says that in paying the plaintiffs as it did (the act or omission of not paying them otherwise being the basis of the present actions) the defendant was acting in good faith in conformity with and in reliance upon acts of the United States Maritime Commission, the Army, the Navy, United States Department of Labor, the Wage and Hour Division, the War Labor Board, the Wage Stabilization agencies, the United States Department of Justice, of such character as to be properly classifiable as an administrative regulation, order, ruling, approval, or interpretation of an agency of the United States, or as an administrative practice or enforcement policy of an agency of the United States with respect to the class of em-

ployers to which the defendant belongs within the meaning of these words as used in said section 9; and therefore the plaintiffs are barred from recovery by the provisions of said section.

### Eleventh Defense

As a supplemental and additional defense the defendant pleads the applicability and effect of Public Law 177 of the 81st Congress, First Session, which became effective as of July 20, 1949, reading as follows:

#### “An Act

“To clarify the overtime compensation provisions of the Fair Labor Standards Act of 1938, as amended.

“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 7 of the Fair Labor Standards Act of 1938, as amended, is amended by adding at the end thereof a new subsection (e), to read as follows:

““(e) For the purpose of computing overtime compensation payable under this section to an employee—

(1) who is paid for work on Saturdays, Sundays, or holidays, or on the sixth or seventh day of the workweek, at a premium rate not less than one and one-half times the rate established in good faith for like work per-

formed in non-overtime hours on other days,  
or

(2) who, in pursuance of an applicable employment contract or collective bargaining agreement, is paid for work outside of the hours established in good faith by the contract or agreement as the basic, normal, or regular workday (not exceeding eight hours) or workweek (not exceeding forty hours), at a premium rate not less than one and one-half times the rate established in good faith by the contract or agreement for like work performed during such workday or workweek.

the extra compensation provided by such premium rate shall not be deemed part of the regular rate at which the employee is employed and may be credited toward any premium compensation due him under this section for overtime work.'

"Sec. 2. No employer shall be subject to any liability or punishment under the Fair Labor Standards Act of 1938, as amended (in any action or proceeding commenced prior to or on or after the date of the enactment of this Act), on account of the failure of said employer to pay an employee compensation for any period of overtime work performed prior to the date of enactment of this Act, if the compensation paid prior to such date for such work was at least equal to the compensation which would have been payable for such work had the amendment made by section 1 of this Act been in effect at the time of such payment.

"Approved July 20, 1949."

The defendant says that during all periods when the plaintiffs worked for the defendant, the defendant paid them, prior to July 20, 1949, compensation for their work which was at least equal to the compensation which would have been payable for such work had subsection (e) of Section 7 of the Fair Labor Standards Act of 1938, as so amended, been in effect during such periods.

/s/ FRANK J. HENNESSY,  
United States Attorney, Northern District of California.

/s/ H. G. MORISON,  
Assistant Attorney General  
of the United States.

/s/ EDWARD H. HICKEY,  
Special Assistant to the Attorney General.

/s/ MARVIN C. TAYLOR,  
Special Attorney, Department  
of Justice.

Attorneys for this Defendant.

[Endorsed]: Filed September 12, 1949.

In the United States District Court for the Northern District of California, Southern Division

No. 25299-G

DAUNE MOSS, et al.,

Plaintiffs,

vs.

HAWAIIAN DREDGING CO., et al.,

Defendants.

No. 26060-G

MARTIN H. LARSEN, et al.,

Plaintiffs,

vs.

FLOOD BROS., a corporation, et al.,

Defendants.

CONSOLIDATED CASES, hereby referred to and made a part hereof by number:

Nos. 25300, 25301, 25302, 26061, 26062, 26063, 26064, 26065, 26066, 26067, 26068, 26069, 26070, 26071, 26072, 26073, 26074, 26075, 26076, 26077, 26078, 26242, 26243, 26245, 26247, 26535, 26536, 26537, 27001, 26919.

### SUPPLEMENTAL OPINION AND FINDINGS

Under date of March 31, 1949, the Court filed an opinion herein holding that the special defenses asserted by defendants under Sections 9 and 11 of the Portal-to-Portal Act of 1947 (29 USC 251



et seq.) were sustained by the evidence and that defendants were therefore entitled to judgment. Subsequently additional motions were filed by both sides and hearings were had by the Court with respect to the motions and with respect to the findings. Briefs have been filed and arguments had upon all of these matters.

The Court now makes the following disposition of the motions presented:

1. Plaintiffs' motions for leave to file supplemental complaints are severally denied.
2. Defendants' motions, filed on September 12, 1949, to amend the answers herein are severally granted.
3. The Court having reserved ruling upon the admission in evidence of the deposition of David A. McCabe offered at the time of the trial of this case, now admits the same in evidence.

### Findings

1. The Court finds that the defendants, who were members of the Waterfront Employers Association, relied in good faith upon the administrative rulings of the Administrator of the Fair Labor Standards Act and in good faith followed the pay practices approved by such rulings.
2. The Court finds that the defendants "Contractors Pacific Naval Air Bases" who were non-members of the Waterfront Employers Association in good faith relied upon the administrative rulings

which approved the pay practices followed by them.

3. The Court finds that the obtaining of indemnity agreements by the employers from certain governmental agencies in no way militated against good faith reliance upon the part of the employers upon the administrative rulings referred to in findings 1 and 2.

4. The Court makes no finding upon the issue raised by the defendants as to the alleged "executive" status of the "walking bosses," in view of findings 1, 2 and 3.

5. The findings hereinbefore made are intended to and are hereby made applicable to cover so-called "penalty cargo" and "skill differentials."

6. Since the filing of the Court's opinion of March 31, 1949, Public Law 177 was enacted by the Congress on July 20, 1949, and approved by the President. By Section 2 thereof, liability of employers, under the Fair Labor Standards Act of 1938, upon the claims asserted by the plaintiffs in this consolidated action, is retroactively terminated. Defendants, having by amendment to their answers, pleaded Public Law 177 as a special defense, the Court sustains the said defense and finds the same to be a valid bar to the causes of action asserted by the plaintiffs.<sup>1</sup>

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<sup>1</sup>At the final hearing upon the settlement of findings and the various motions, counsel for plaintiffs urged that the Court fix a time for further oral argument upon the question raised as to the Constitutionality of Public Law 177. Both sides have

Conclusions of Law

Defendants are entitled to judgment, in their favor, for the reasons stated in the Court's opinion of March 31, 1949, and judgment will be entered accordingly in favor of defendants for their costs of suit.

Dated: November 25, 1949.

/s/ LEWIS E. GOODMAN,  
United States District Judge.

[Endorsed]: Filed November 28, 1949.

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thoroughly briefed this question. After a careful study of the briefs and of the issue involved, I am satisfied that the issue of unconstitutionality as raised is not substantial. Public Law 177, particularly as to its retroactive provisions, is identical to Section 2 of the Portal-to-Portal Act of 1947 (29 USC 252). In many Circuits, the Constitutionality of the Portal-to-Portal Act has been sustained and the Supreme Court has denied certiorari in nine cases. Inasmuch as the overwhelming weight of authority and reason, in my opinion, makes the issue of the Constitutionality of Public Law 177 no longer a substantial question, I see no reason for additional oral argument and further delay in the final disposition of this cause.

[Title of District Court and Causes.]

### MOTION FOR NEW TRIAL

Comes now the plaintiffs herein, by their counsel, Messrs. Gladstein, Andersen, Resner & Sawyer, and move the Court to set aside that certain Opinion of March 30, 1949, and those certain Findings of Fact and Conclusions of Law and Judgment of November 25, 1949, and to grant to plaintiffs a new trial on the following grounds:

#### I.

The Court erred in ruling that Public Law 177 (81st Congress, First Session) was constitutional, it being the contention of the plaintiffs that said statute, and particularly its retroactive feature, is unconstitutional and violative of various provisions of the United States Constitution and the Amendments thereto.

#### II.

The Court erred as a matter of law in finding a judgment for defendants and against plaintiffs. The judgment in favor of defendants herein was contrary to law and in conflict with the Supreme Court decision in *Bay Ridge Operating Co., Inc., v. Aaron*, 334 U. S. 446.

#### III.

The Court erred as a matter of law in sustaining defendants' defenses under the Portal Act of 1947 (29 USC 252), said statute and the various provisions thereof insofar as they are applicable in the instant case being unconstitutional and con-

trary to the provisions of the United States Constitution and Amendments thereto.

#### IV.

The Court erred as a matter of law in sustaining defendants' so-called "good faith defenses" under the Portal Act of 1947, and particularly the Court erred in sustaining the so-called "Dorothy Williams letter" as constituting an administrative ruling on which the defendants in good faith relied. Said Dorothy Williams' letter was not an administrative ruling, and the defendants did not in good faith rely on same.

#### V.

The Court erred as a matter of law in finding for the defendants and in failing to find that the defendants were not in good faith reliance on any so-called administrative ruling, by virtue of the fact that the defendants had obtained indemnity agreements from the United States on account of any liability which might be imposed against them in the instant case; that the defendants could not be in good faith in that the United States is the real party in interest in this proceeding, and that independently of anything that defendants may have done, the United States was not in good faith reliance on any administrative rulings or otherwise.

#### VI.

The Court erred as a matter of law in failing to rule that plaintiffs were entitled to penalty cargo and skill differential wage payments in the



instant case and that defendants violated the Fair Labor Standards Act in said respects.

## VII.

The Court erred as a matter of law in failing to permit plaintiffs to file supplemental complaints for the periods of time intervening between the filing of the instant action and the decision herein.

## VIII.

The Court erred as a matter of law in failing to find that the defendants were not in good faith reliance on any so-called administrative rulings after the decision by the Court of Appeals for the Second Circuit in *Bay Ridge Operating Co., Inc., v. Aaron*, *supra*.

## IX.

The Court erred as a matter of law in rendering the opinion and making findings of fact and conclusions of law herein, and in failing to adopt the findings of fact and conclusions of law proposed by plaintiffs.

## X.

The Court erred as a matter of law in permitting defendants to amend their answers herein, and particularly the Court erred in granting defendants' motions to amend answers filed on September 12, 1949.

## XI.

The Court committed various legal errors in receiving evidence offered by defendants and in rejecting evidence offered by plaintiffs.



XII.

The judgment herein is contrary to the evidence and is not supported by the evidence.

XIII.

The evidence herein requires a judgment in favor of plaintiffs and against defendants.

XIV.

The Court erred as a matter of evidence in receiving testimony concerning so-called good faith defenses and erred as a matter of evidence in finding that the so-called Dorothy Williams letter constituted a ruling, and erred further in finding that defendants in good faith relied thereupon.

XV.

The Court erred as a matter of evidence in finding that there were other administrative rulings which defendants in good faith relied upon.

XVI.

The Court erred as a matter of evidence in receiving evidence allowing defenses under the Portal Act of 1947, and said evidence should have been excluded and rejected.

XVII.

The Court erred in receiving into evidence the position of David A. McCabe.

XVIII.

The Court made various errors with respect to the admission of evidence which was received at

the request of defendants, and erred in rejecting and refusing to receive various evidence offered by the plaintiffs.

### XIX.

Plaintiffs have obtained and come into possession of newly discovered evidence since the trial herein, which they could not with due diligence have discovered prior to the trial herein, and in connection with this newly discovered evidence, plaintiffs will file affidavits hereinafter.

This motion is based upon the grounds above specified, upon all of the files, records, papers and proceedings herein, upon affidavits to be filed hereafter, and upon argument of counsel.

Dated: December 5, 1949.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,

By /s/ RICHARD GLADSTEIN,  
/s/ HERBERT RESNER,  
/s/ EWING SIBBETT,  
Attorneys for Plaintiffs.

### Order Extending Time to File Affidavits

Good cause appearing to the Court therefor,

Plaintiffs are allowed until and including December 25, 1949, within which to file affidavits in support of their motion for new trial herein.

Dated: December 5, 1949.

/s/ LEWIS E. GOODMAN,  
United States District Judge.

[Endorsed]: Filed December 5, 1949.

In the United States District Court for the Northern District of California, Southern Division

No. 25299-G

DUANE MOSS, et al.,

Plaintiffs,

vs.

HAWAIIAN DREDGING CO., et al.,

Defendants.

Consolidated cases, hereby referred to and made a part hereof by number:

Nos. 25300, 25301, 25302, 26060, 26061, 26062, 26063, 26064, 26065, 26066, 26067, 26068, 26069, 26070, 26071, 26072, 26073, 26074, 26075, 26076, 26077, 26078, 26242, 26243, 26245, 26247, 26535, 26536, 26537, 26919, 27001.

### JUDGMENT

The above-entitled cause and cases consolidated therewith came on regularly for trial on the 27th day of March, 1947, and were continued thereafter from day to day and time to time until final submission on November 21, 1949, before the Court sitting without a jury, Messrs. Gladstein, Andersen, Resner & Sawyer appearing for the plaintiffs, and H. G. Morison, Assistant Attorney General of the United States; Edward H. Hickey, Special Assistant to the Attorney General; Marvin C. Taylor, Special Attorney of the Department of Justice; Frank J. Hennessy, United States Attorney for the Northern District of California, and C. Elmer Col-

lett, Assistant United States Attorney for said District, appearing for the defendants, and evidence both oral and documentary having been introduced and the causes submitted for decision, and the Court having rendered its decision and filed its Findings of Fact and Conclusions of Law, and having ordered that judgment be entered in favor of the defendants in accordance therewith,

Wherefore, by reason of the law and the facts herein, It Is Ordered, Adjudged and Decreed by the Court that the plaintiffs take nothing by their complaints herein.

It Is Further Ordered, Adjudged and Decreed that the defendants recover costs in the amount of \$1295.42.

Judgment Rendered this 23rd day of January, 1950.

/s/ LOUIS GOODMAN,

United States District Judge.

Entered in civil docket Jan. 24, 1950.

Lodged January 17, 1950.

[Endorsed]: Filed January 23, 1950.

[Title of District Court and Causes.]

ORDER DENYING PLAINTIFFS' MOTION  
FOR A NEW TRIAL

The motion of the plaintiffs for a new trial herein having been argued, briefed and submitted for decision, now upon due consideration thereof, it is Ordered that the said motion be and the same is hereby denied.

Dated: March 15, 1950.

/s/ LOUIS GOODMAN,  
United States District Judge.

[Endorsed]: Filed March 16, 1950.

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[Title of District Court and Cause.]

No. 25299-G and Consolidated Cases

NOTICE OF APPEAL

To the Clerk of the Above-Entitled Court:

You Are Hereby notified that the plaintiffs in the above-entitled consolidated actions do hereby appeal from the judgment heretofore entered herein, and from that certain order denying said plaintiffs' motion to retax costs herein, and from that certain order denying said plaintiffs' motion for new trial herein.

Dated: April 13, 1950.

GLADSTEIN, ANDERSEN,  
RESNER & SAWYER,

/s/ EWING SIBBETT,  
Attorneys for Plaintiffs.

[Endorsed]: Filed April 14, 1950.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON  
APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing and accompanying exhibits, listed below, are the originals filed in this Court, or true and correct copies of orders entered on the minutes of this Court, in the above-entitled case, and that they constitute the Record on Appeal herein, as designated by the Appellants, to wit:

Complaint for Unpaid Overtime Compensation Under the Fair Labor Standards Act;

First Amended Complaint for Unpaid Overtime Compensation Under the Fair Labor Standards Act—Contains Exhibit A;

Amendment to First Amended Complaint for Unpaid Overtime Compensation Under the Fair Labor Standards Act;

Order for Consolidation;

Answer of Hawaiian Dredging Company, Limited, et al.;

Stipulation and Order for Consolidation;

Motion of Hawaiian Dredging Co. to Amend Answer;

Minute Order of May 22, 1947—Ordered Motion for Leave to File Amended Answers, etc., Granted;

Motion of Defendant Hawaiian Dredging Co. to Amend Answer;



Motion of Defendants Hawaiian Dredging Company, et al., to Amend Answer;

Stipulation Relative to Deposition of David A. McCabe;

Minute Order of June 5, 1947—Motion of Defendants to Amend Answer Granted;

Interrogatories—Direct—Redirect and Cross and Answers;

Notice of Motion;

Defendants' Motion that the Plaintiffs Motion to Reopen and Continue the Trial Be Denied Unless the Plaintiffs Shall Make a More Definite Statement and Affidavits as to the Grounds of Their Motion;

Minute Order of August 22, 1947—Ordered that Motion to Reopen Cause Be Granted for the Limited Purposes, etc., Further Ordered that the Order of Submission Be Vacated and Set Aside;

Order;

Notice of Motion for Leave to File Supplemental Complaint;

Notice of Motion for Rule to Produce Copies of Letters and to Reopen the Trial of the Above Consolidated Cases;

Affidavit of Ewing Sibbett in Support of Issuance of Subpoena Duces Tecum;

Order for Issuance of Subpoena Duces Tecum;

Civil Subpoena Duces Tecum;

Notice of Motion;

Affidavit of F. P. Foisie in Support of Motion to Quash Subpoena and Affidavit of C. Elmer Col-

lett in Support of Motion to Quash Subpoena and to Enlarge Time;

Motion to Quash Subpoena for Production of Documents;

Notice of Taking Deposition;

Request for Admissions and Exhibits;

Order Quashing Subpoena for Production of Documents;

Objections to Request for Admissions;

Minute Order of January 17, 1949—Ordered Plaintiff's Motion to Reopen Cause Denied, Ordered Cause Re-submitted on Briefs, Ordered Matter Continued for Submission;

Minute Order of February 28, 1949—Ordered Cases Submitted;

Opinion;

Minute Order of May 19, 1949—Ordered that Court's Opinion of May 31, 1949, Be Deemed to Be the Defendant's Proposed Findings of Fact and Conclusions of Law, Ordered Plaintiffs Be Allowed 20 Days to File Counter Findings, etc., Ordered Defendants Have 10 Days Thereafter to File any Written Objections Thereto;

Proposed Findings of Fact and Conclusions of Law—Lodged June 10, 1949;

Motion Re Findings;

Defendants' Objections to Plaintiffs' Proposed Findings of Fact and Conclusions of Law;

Motion of Defendant to Amend Answer;

Supplemental Opinion and Findings;

Motion for New Trial;

Notice of Hearing on Motion for New Trial;

Affidavit of Herbert Resner and Attached Exhibits;

Affidavit of Herbert Resner;

Judgment;

Disbursements;

Memorandum of Costs and Disbursements;

Notice of Motion and Appeal and Motion to Retax Costs;

Minute Order of February 6, 1950—Hearing on Motion to Retax Costs, Ordered Cost Bill Be Filed by United States, Further Ordered Motion to Strike Out 31 Docket Fees and Allowing 1 Docket Fee Be Granted;

Order Denying Plaintiffs' Motion for a New Trial;

Notice of Appeal;

Order Extending Time for Filing Record on Appeal and Docketing Appeal;

Designation of Record on Appeal to the United States Court of Appeals for the Ninth Circuit;

Additional Designation of Record on Appeal to the United States Court of Appeals for the Ninth Circuit;

Plaintiffs' Exhibits Nos. 1, 2, 3, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23;

Defendants' Exhibits Nos. A, A 1, A 2, A 3, A 4, A 5, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, V, W, X and Y.

Plaintiffs' Exhibit No. 1 on Motion to Reopen Cause.

Reporter's Transcripts:

Vol. 1 No. 26536 G for May 22, 1947;

Vol. 2 No. 26536 G for May 23, 1947;

Vol. 3 No. 26536 G for May 27, 1947;

Vol. 4 No. 26536 G for May 28, 1947;

Vol. 5 No. 26536 G for May 29, 1947;

Vol. 6 No. 26536 G for June 3, 1947;

Vol. 7 No. 26536 G for June 4, 1947;

Vol. 8 No. 26536 G for June 5, 1947;

Vol. 9 No. 26536 G for June 6, 1947;

For November 5, 1947;

For November 29, 1948—Further Discussion on Motion to Reopen;

For January 17, 1949—Hearing on Motion to Reopen Cause;

In Case No. 26060-G—Martin H. Larsen, et al., Plaintiffs, vs. Flood Bros., a Corporation, et al., Defendants;

Complaint for Unpaid Overtime Compensation Under the Fair Labor Standards Act;

First Amended Complaint for Unpaid Overtime Compensation Under the Fair Labor Standards Act;

Amendment to First Amended Complaint for Unpaid Overtime Compensation Under the Fair Labor Standards Act;

Answer of Defendant Flood Bros. to First Amended Complaint and to Amendment to First Amended Complaint;

Motion of Defendant Flood Bros. to Amend Answer;

Motion of Defendant to Amend Answer;

In Witness Whereof, I have hereunto set my

hand and affixed the seal of said District Court this 7th day of June, A.D. 1950.

[Seal]                      C. W. CALBREATH,  
Clerk.

By /s/ M. E. VAN BUREN,  
Deputy Clerk.

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[Endorsed]: No. 12571. United States Court of Appeals for the Ninth Circuit. Duane Moss, et al., Appellants, vs. Hawaiian Dredging Co., et al., Appellees. Martin H. Larsen, et al., Appellants, vs. Flood Bros., a Corporation, et al., Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed June 8, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

At a Stated Term, to wit: The October Term 1949, of the United States Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the nineteenth day of June, in the year of our Lord one thousand nine hundred and fifty.

Present: Honorable William Denman, Chief Judge,  
Presiding.

Honorable Homer T. Bone, Circuit Judge,

Honorable William E. Orr, Circuit Judge.

[Title of Cause.]

ORDER THAT CAUSE BE FIRST PRESENTED TO THIS COURT ON QUESTION OF CONSTITUTIONALITY OF ACT OF CONGRESS OF JULY 20, 1949, C. 352.

Ordered motion of appellants that cause be heard on typewritten transcript of record and typewritten briefs of appellants presented by Mr. Herbert Resner, counsel for appellants, and by Mr. C. Elmer Collett, Assistant U. S. Attorney, counsel for appellees, and submitted to the court for consideration and decision.

Upon consideration thereof, It Is Ordered that in this cause there be first presented to the Court the constitutionality of the Act of Congress of July 20, 1949, c. 352 (Public Law 177) 81st Congress, 1st Session; that appellants are granted ten days from date within which to file a new statement of points based on the question to be first presented



and designation of portions of record to be printed in support of such points; the appellees to have ten days thereafter to file counter-designation if so advised, and thereafter the cause to proceed on such question as provided by the rules of this court.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 12,571

DUANE MOSS, et al.,

Appellants,

vs.

HAWAIIAN DREDGING CO., et al.,

Appellees.

MARTIN H. LARSEN, et al.,

Appellants,

vs.

FLOOD BROS., a Corporation, et al.,

Appellees.

Consolidated Cases, hereby referred to and made  
a part hereof by number

AMENDED DESIGNATION OF RECORD ON  
APPEAL AND STATEMENT OF POINTS  
ON APPEAL

Come now appellants herein, by their counsel,  
Messrs. Gladstein, Andersen, Resner & Leonard,  
and Herbert Resner, and declare as follows:

## I.

## Designation of Record on Appeal

Appellants designate the following portions of the Clerk's Transcript as the record on appeal herein:

Moss, et al. v Hawaiian Dredging Co., et al.,  
No. 25299-G

1. Complaint filed Nov. 14, 1945.
3. First Amended Complaint, including exhibit, filed Jan. 28, 1946.
4. Amendment to First Amended Complaint filed Oct. 8, 1946.
5. Order Consolidating this cause with Nos. 25300, 25301 and 25302 filed Nov. 6, 1946.
6. Answer filed Nov. 25, 1946.
8. Stipulation and Order for Consolidation of this cause with Nos. 26064, 26072, 26078, 26071, 26245, 26069, 26077, 27001, 26919, 26061, 26067, 26076, 26062, 26075, 26242, 26065, 26073, 26535, 26070, 26074, 26068, 26066, 26243, 26060, 26063, 26537, 26247 and 26536 in the files and records of the above-entitled Court filed April 30, 1947.
61. Motion of Defendants to Amend Answer filed September 12, 1949.
66. Supplementary Opinion and Findings of Judge Goodman filed November 28, 1949.
67. Plaintiffs' Motion for New Trial filed December 5, 1949.
71. Judgment filed January 23, 1950.
78. Order Denying Plaintiffs' Motion for New Trial filed March 16, 1950.
80. Notice of Appeal filed April 14, 1950.

Larsen, et al., vs. Flood Bros., et al.,

No. 26060-G

2. First Amended Complaint filed August 5, 1946.
8. Amendment to First Amended Complaint filed December 23, 1946.
9. Answer filed January 3, 1947.

## II.

### Statement of Points on Appeal

1. The District Court erred in upholding the constitutionality of the Act of July 20, 1949, c. 352 (Public Law 177) 81st Cong., 1st Sess. Said Act on its face and as construed and applied herein is unconstitutional.

2. The judgment of the District Court was contrary to law.

Respectfully submitted,

GLADSTEIN, ANDERSEN,  
RESNER & LEONARD,

/s/ RICHARD GLADSTEIN,

/s/ HERBERT RESNER,

/s/ EWING SIBBETT,

Counsel for Appellants.

Receipt of copy acknowledged.

[Endorsed]: Filed July 10, 1950.

[Title of Court of Appeals and Cause.]

## COUNTER-DESIGNATION OF RECORD ON APPEAL

At the hearing before the Court of Appeals on June 19, 1950, the Court considered the procedure to be followed in this appeal. During the hearing, counsel for the appellants made several statements to the Court that are relied upon by the appellees in connection with the record to be printed on appeal.

Counsel for appellants there stated that the District Court based its judgment in favor of appellees on a number of separate complete defenses, one of which was the defense based on the Act of Congress of July 20, 1949, c. 352 (Public Law 177) 81st Congress, First Session. It was suggested that a decision on appeal with respect to this defense might dispose of the case. Counsel for appellants stated that a decision sustaining the constitutionality of that Act would dispose of their appeal herein, but that a decision holding that Act unconstitutional would not dispose of the case because of the alternative defenses sustained by the District Court. Counsel for appellant stated that they wished to preserve these other questions, which would be significant only if that Act were held unconstitutional, so that they could be considered in this appeal. It also appeared that much of the record would not be essential to a decision of the constitutional question and could be excluded from the printed record thereon. At the close of this hear-

ing the Court of Appeals ordered that the question of the constitutionality of that Act be first presented to the Court and that appellants be permitted to file a new statement of points based on that question and to file, with respect thereto, a designation of portions of the record to be printed.

In view of the proceedings summarized above and the order of the Court referred to herein recognizing that final judgment may be entered for the appellees if said Act is constitutional, appellees designate no additional portion of the record to be printed.

/s/ H. G. MORISON,  
Assistant Attorney General.

/s/ FRANK J. HENNESSY,  
United States Attorney.

/s/ EDWARD H. HICKEY,  
Special Assistant to the Attorney General.

/s/ MARVIN C. TAYLOR,  
Special Attorney, Department  
of Justice.

/s/ C. ELMER COLLETT,  
United States Attorney.  
Attorneys for Appellees.

[Endorsed]: Filed July 25, 1950.

